
Cohen Building- Room 5527
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Washington, D.C. 20201

[We redact certain identifying information and certain potentially privileged, confidential, or proprietary information associated with the individual or entity, unless otherwise approved by the requester.]

Issued: August 17, 2001

Posted: August 24, 2001

[name and address redacted]

Re: Final Notice of Modification of OIG Advisory Opinion No. 98-5

Dear [name redacted]:

I am writing in reference to Office of Inspector General (“OIG”) Advisory Opinion No. 98-5, which was issued to [name redacted] (the “Requestor”) on April 17, 1998. In OIG Advisory Opinion No. 98-5, we concluded that the Requestor’s contract with a managed care organization (in particular, its coordination of benefits provision, hereafter the “COB provision”) could violate the anti-kickback statute, and we could not conclude that the COB provision posed little or no risk of Federal health care program fraud and abuse.

In a more recent advisory opinion request involving the same contract and same managed care organization, but a different requesting party, we were provided with additional information that was not available at the time of the advisory opinion request for OIG Advisory Opinion No. 98-5. The newer advisory opinion reaches a conclusion that requires a modification of OIG Advisory Opinion No. 98-5. By letter dated February 12, 2001, the OIG provided the Requestor with a Notice of Intent to Modify OIG Advisory Opinion No. 98-5 (the “Notice”). Pursuant to § 1008.45(a) of Title 42 of the Code of Federal Regulations, the OIG also provided the Requestor with a reasonable opportunity to respond to the Notice. Accordingly, after issuance of the Notice, the Requestor and the OIG exchanged several letters, documents, and telephone discussions over the course of several weeks.

For the reasons more fully set forth in OIG Advisory Opinion No. 01-13, August 7, 2001, we have concluded that while the application of the COB provision could give rise to prohibited remuneration under the anti-kickback statute in some situations, were the requisite intent present, the OIG will not impose administrative sanctions on the requestor of OIG Advisory Opinion No. 01-13, under sections 1128(b)(7) or 1128A(a)(7) of the Social Security Act (the “Act”) (as those sections relate to the commission of acts described in section 1128B(b) of the Act) in connection

with the COB provision. Given that the State insurance scheme and the relevant contractual provisions are the same in both OIG Advisory Opinion No. 98-5 and OIG Advisory Opinion No. 01-13, we hereby modify OIG Advisory Opinion No. 98-5 to conclude that the OIG would not impose administrative sanctions on the Requestor under sections 1128(b)(7) or 1128A(a)(7) of the Act (as those sections relate to the commission of acts described in section 1128B(b) of the Act) in connection with the COB provision.

Pursuant to 42 C.F.R. § 1008.45(a), this letter serves as final notice of the OIG's modification of OIG Advisory Opinion No. 98-5. The modification of OIG Advisory Opinion No. 98-5 means that the advisory opinion continues in full force and effect in modified form. See 42 C.F.R. § 1008.45(b)(3).

Sincerely,

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D. McCarty Thornton
Chief Counsel to the Inspector General